The Planning Inspectorate

Costs Decision

Inquiry Held on 19 October 2022
Site visit made on 19 October 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Costs application in relation to Appeal Ref: APP/E5330/C/19/3228120
82 St. Margaret's Terrace, Plumstead, London SE18 7RN

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Ugur Halil for a full award of costs against the Council of the Royal Borough of Greenwich.
- The inquiry was in connection with an appeal against an enforcement notice alleging the unauthorised conversion of and making of a material change of use of a single self-contained family dwelling house into 7 self-contained flats.

Decision

1. The application for an award of costs is refused.

Preliminary Matter

2. The costs application was submitted after the close of the Inquiry and was dealt with in writing.

Reasons

3. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The costs application is procedural, relating to two very late adjournments to the Inquiry.

4. As background, my attention has been drawn to the Council not having attended arranged meetings with the appellant on several occasions. I understand that only one Officer was involved in this case until after the two adjournments.

5. I understand that the first adjournment was caused by the Council's Officer having contracted Covid shortly before the Inquiry was due to open on 24 November 2021. The appellant was not initially copied into correspondence between the Council and The Planning Inspectorate (PINS) relating to this potential adjournment. Notification of PINS that the Council's Officer was unwell was on the morning of 22 November 2021. The following morning, the Case Officer at PINS sent an email to the Council and the appellant. This was the first time the appellant became aware of the issue. The Inquiry was adjourned that afternoon. There was, therefore, a gap of approximately a day between the Council raising the issue and the appellant becoming aware.

6. The appellant suggests that it was unreasonable not to have been kept informed and notified directly by the Council that their Officer would be unable to attend. It would have been helpful had the Council copied the appellant into the initial correspondence relating to their witness' illness. I also note that an email sent to PINS appears not to have been received. Nevertheless, it was a short delay. I consider an adjournment at that late stage due to the illness of a witness to be a potential risk and not unreasonable. Whilst it was unfortunate that the appellant was not made aware at the same time as PINS, that may simply have been an oversight by the Council. Neither is it unreasonable for a Council not to be unable to find an appropriate alternative witness at such a late stage, taking account of the need for an Officer to familiarise themselves with the case and prepare for the Inquiry. I do not find unreasonable behaviour at that stage in the proceedings.

7. The second date for the Inquiry was set for 28 June 2022. I understand that on 20 June 2022 the Officer at the Council went on sick leave and handed in their notice. Consequently, they were not able to represent the Council at the Inquiry. Following a conference with their appointed Counsel, the Council sought an adjournment on the following afternoon. I have been provided with a letter dated 23 June 2022 where the appellant warned that they may make an application for costs if the Inquiry were adjourned.

8. There was a short period of just over a week between the Officer going on sick leave and handing in their notice to allow an Officer of the Council to prepare for the Inquiry. In the context of a relatively straightforward Inquiry on ground (d) alone and where the Council were supplying limited additional evidence of their own, such a period may have been sufficient for an Officer to prepare. Given that Inquiry that had been previously adjourned at the request of the Council, I would have expected them to try to ensure it could proceed. However, I understand that that they had no other Officers with capacity to review the evidence and act as a witness on the date of the Inquiry. The Council had not anticipated the Officer responsible not being available so suddenly. The Council sought to notify PINS and the appellant as soon as they were aware of the issue and sought Counsel-to-Counsel correspondence. Taking all of that into account, on balance I consider that the Council did not act unreasonably in how they dealt with the circumstances.

9. I understand that the original Officer did not leave the Council. Nevertheless, they did not attend or give evidence at this Inquiry.

10. As set out above, there were two adjournments to the Inquiry. Whilst each one individually was not unreasonable, the appellant indicate that these reflect the approach of the Council to this case. The appellant is highly critical of the Council's original Officer, including questioning why proof of a positive test for Covid was not provided when requesting the first adjournment. However, it is not unreasonable for the Council to have accepted that the Officer was ill without proof via a test. Their evidence suggests that they knew he was too ill to take part, even virtually.

11. The appellant suggests that the Officer was aware of his resignation and sick leave in advance before the second adjournment. They suggest that the Council Officer did not relish the idea of attending the Inquiry and did not prioritise making appropriate arrangements for their absence. Had he been aware that they would not be attending, I agree that it would have been

sensible to ensure another Officer was sufficiently aware of the case to take their place.

12. If the allegation that the Officer was approached outside work by the appellant were true, this should have been raised through the Council. It supports the suggestion that an alternative Officer should have been aware of the evidence and able to attend the Inquiry. Nevertheless, given this is disputed by the appellant, I put little weight on this matter.

13. I note that the Inquiry could have taken place via a blended procedure, with most evidence given in person but the Council's Officer joining online. However, that would only have been possible for the first adjournment and the indications of the Council are that their Officer was not well enough to join in that way. They would also have been likely to miss important details that could have prejudiced their case. For these reasons, I consider that was not a viable or appropriate alternative, such that I find there was no unreasonable behaviour.

14. I note that the Council provided their timetable or list of witnesses during the correspondence on the first adjournment, which was late in the process. Even if unreasonable, given they only provided one witness I consider that would not have resulted in unnecessary or wasted expense in this instance.

15. For the reasons set out above and on balance, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

AJ Steen

INSPECTOR